IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

Bail Appl..No. 7638 of 2007(B)

(CRIME NO. 221/2007 OF CITY POLICE STATION, KANNUR)
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PETITIONERS/ACCUSED NOS.2-4:
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1. **R.ROOPENDER, S/O. RAMACHANDRAN,**
   AGED 24 YEARS, SREE DURGA NALLUMUKKU,
   CHIRACKAL AMSOM, KANNUR.

2. **GOKUL,S/O. KRISHNA KUMAR, AGED 18 YEARS**
   VANDOTHUM VEEDU, VARANDATHADINATHU,
   KANNUR.

3. **VIJAY,S/O. SHANMUGHAM, AGED 18 YEARS**
   KANNUR AMSOM, AYIKKARA LAKSHMIPURAM,
   KANNUR.

BY ADV. SRI.P.M.HABEEB.

RESPONDENT:

STATE OF KERALA,
REP. BY CIRCLE INSPECTOR OF POLICE,
CITY POLICE STATION, KANNUR,
THROUGH PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/12/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.7638 of 2007

Dated this the 13th day of December, 2007

ORDER

Application for anticipatory bail. Petitioners are accused 2 to 4. They along with the 1st accused face allegations, inter alia, under Section 307 r/w 149 I.P.C. The crux of the allegations is that the petitioners along with others were members of an unlawful assembly of persons who armed with dangerous weapons attacked the victims resulting in serious injury for the victim. A stab injury as well as a fracture were suffered by the victim, reports the learned Public Prosecutor with the help of the wound certificate. The 1st accused has been arrested and enlarged on bail as per order dated 29.11.07 in B.A.No.7277 of 2007. Another co-accused who was initially arrayed as the 2nd accused has subsequently been deleted from the array of parties. His application for anticipatory bail was accordingly dismissed.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. They have been arrayed as accused without valid reasons. Their names are not shown in the F.I.R. They have been brought on the array of accused subsequently. The petitioners are not in any way connected with

the crime. They may be granted anticipatory bail, prays the learned counsel for the petitioners.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the mere fact that the petitioners are not named in the F.I.R or the person named in such F.I.R has subsequently been deleted from the array of accused is no reason to justify the claim for anticipatory bail of the petitioners. Satisfactory data has been collected against the petitioners. The nature of the injury suffered by the victim may be taken note of. Under any circumstances it is not at all necessary to permit the petitioners to arm themselves with an order of anticipatory bail at this stage of investigation. They may be directed to surrender before the Investigating Officer or the learned Magistrate and seek regular bail, submits the learned Public Prosecutor.

4. Having considered all the relevant circumstances, I find merit in the opposition by the learned Public Prosecutor. I am unable to perceive any features in this case that would justify the invocation of the extraordinary equitable discretion under

Section 438 Cr.P.C. This, I am satisfied, is a fit case where the petitioners must appear before the learned Magistrate having jurisdiction or the Investigating Officer and then seek bail in the regular and ordinary course.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-